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Annual report of the United Nations High Commissioner for Human Rights

Addendum

Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala*

Summary

The present report describes the work undertaken by the Office of the United Nations High Commissioner for Human Rights in Guatemala (OHCHR-Guatemala) during 2013. In compliance with its mandate, OHCHR-Guatemala conducted monitoring activities in order to provide technical assistance and advice to State institutions and civil society in the implementation of international human rights obligations and the recommendations of human rights mechanisms. OHCHR-Guatemala concluded the first phase of the Maya Programme, which contributed to building judicial precedents related to indigenous peoples.

Effective coordination among State institutions enabled Guatemala to take unprecedented steps to combat impunity. Despite the fact that the Constitutional Court overturned, in May, the verdict against Efraín Ríos Montt, Guatemala made history by becoming the first country in the world to convict a former head of State for genocide in line with international standards. Proceedings will resume in 2015.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is being reproduced in English and Spanish only.

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High levels of violence, including against women, continued to affect the enjoyment of human rights. The report also describes the situation of indigenous peoples and their struggle for collective rights. Energy and extractive projects, particularly in indigenous territories,** were one of the main sources of unrest and, occasionally, violence. In most cases, the common denominator of social conflicts was the failure to inform and to consult with indigenous and other communities concerned. The High Commissioner recognizes some positive steps taken in the promotion of rural development and the fight against malnutrition, and welcomes the establishment of a Global Compact Local Network and encourages companies and other stakeholders to adhere to the Compact's principles.

** The term territories is used in this report in accordance with the concept set out in article 13, paragraph 2, of International Labour Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

Annex

[English and Spanish only]

Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala

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I. Introduction

1. On 10 January 2005, the United Nations High Commissioner for Human Rights signed an agreement with the Government of Guatemala for the establishment of a country office (OHCHR-Guatemala). Under the agreement, the functions of OHCHR-Guatemala are to monitor the human rights situation and provide advice to State institutions and civil society. The agreement was extended for a second time, for three years, on 19 September 2011.

2. The present report provides an overview of the human rights situation in Guatemala, with a special focus on the justice system and the fight against impunity. It also describes the work conducted by OHCHR-Guatemala and includes a series of recommendations.

II. National context

3. During the second year of his term, President Otto Pérez Molina continued to prioritize the Covenant for Security, Justice and Peace, along with the Fiscal and Competitiveness Covenant and the Zero Hunger Covenant.

4. The questioning of the Minister of Culture and Sports paralysed the congressional agenda throughout most of 2013. By the end of the legislative session, a first package of laws on transparency in the management of public funds had been adopted.[1] The approval of a second legislative package, which is crucial for strengthening the anticorruption mechanisms, is still pending.

5. Several allegations of corruption involving high-level officials in areas such as customs, ports and procurement were made public. In May, former President Alfonso Portillo was extradited to the United States of America on money laundering charges. Guatemala ranked 123rd out of 177 countries in Transparency International's 2013 Corruption Perceptions Index.[2]

6. Guatemala continued to implement a project for the consolidation of peace, with funding from the United Nations Peacebuilding Fund, which contributed to strengthening capacities in the administration of justice. The mandate of the International Commission against Impunity in Guatemala (CICIG) was renewed until 2015, and Iván Velásquez, appointed as Commissioner by the United Nations Secretary-General, took office in October.

7. In November, the Government signed on to the second phase of the Maya Programme, jointly implemented by OHCHR-Guatemala, the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF) and financed by Norway. The programme will continue to promote indigenous peoples' rights in the areas of education, political participation and justice.

8. Guatemala hosted the forty-third session of the General Assembly of the Organization of American States, and, in this setting, promoted a comprehensive policy to address the drug problem.

[1] Decree 13-2013.

[2] See www.transparency.org/cpi2013/results.

III. Overall human rights situation

9. The High Commissioner welcomes the unprecedented steps taken by the State in the fight against impunity, led by the Attorney General's Office (Ministerio Público) (see para. 18 below). These were possible due partly to the effective coordination and cooperation between the Attorney General's Office, the Ministry of the Interior (Ministerio de Gobernación), the National Civil Police (PNC), and the National Institute of Forensic Science in Guatemala (INACIF), with the support of CICIG in some cases.

10. In order to avoid setbacks, consolidate the achievements in the fight against impunity, and strengthen the independence of the judiciary it is critical that the nominating commissions — responsible for the selection of magistrates for the Supreme Court of Justice and the Courts of Appeal, the Attorney General and other authorities in 2014 — apply the principles of objectivity, suitability, transparency and accountability in this process.

11. Seventeen years after the signing of the Peace Agreements, the State continued to take steps to face its past as a prerequisite for strengthening the rule of law. As an illustration of this trend, a historic trial took place against former head of State Efraín Ríos Montt and former chief of military intelligence José Mauricio Rodríguez Sánchez, on charges of genocide and crimes against humanity against the Ixil people in 1982 (see paras. 26–28 below).

12. Human rights defenders were subjected to media campaigns and attacks aimed at discrediting their work. These attacks were directed against the defenders of victims of human rights violations during the internal armed conflict; environmental rights defenders; and indigenous and peasant activists (see paras. 45–49 below). In some cases high-level State officials also questioned their work.

13. The enjoyment of the right to life continued to be affected by the high levels of violence and food insecurity. According to INACIF, there were 5,156 violent deaths, including 664 women, 356 boys and 122 girls.[3] According to the PNC, 81 per cent of homicides were committed with firearms, compared to the world average of 42 per cent.[4] Despite the measures taken by the State to fight organized crime, three massacres were recorded by OHCHR-Guatemala: in Las Cruces, Petén, 5 people died in April; in Salcajá, Quetzaltenango, 9 police officers were killed in June; and in San José Nacahuil, Guatemala, 11 people were murdered in September. There were 43 deaths by lynching — an increase of 169 per cent.[5] In 2013, 106 children under the age of 5 died due to causes related to acute malnutrition.[6]

14. The inequality gap persists throughout the country. According to the Rural Poverty Map, the majority of the 55 municipalities with poverty levels ranging between 85 and 97 per cent are indigenous.[7] These municipalities also account for more than 60 per cent of chronic malnutrition among children under age 5.[8]

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[3] *Source*: INACIF, data for January–October 2013.

[4] *Small Arms Survey 2012*, p. 11. See www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2012/eng/Small-Arms-Survey-2012-Chapter-01-EN.pdf.

[5] *Source*: National Commission in Support of the Programme for the Prevention of Lynching, data for January–October 2013.

[6] *Source*: Health Information Management System (December).

[7] See National Statistics Institute, *Mapas de pobreza rural en Guatemala 2011*.

[8] World Food Programme and Secretariat for Food and Nutritional Security (SESAN), "Mapeo y análisis de la desnutrición crónica en Guatemala" (2012).

15. Although the recent Tax Update Law allowed for a substantial increase in income tax collection, other factors, such as the low rate of customs duty collection, the reduction in the vehicle circulation tax and the weakness of the Tax Administration System, limited the State's revenue-raising capacity. With national tax revenue of under 11.5 per cent of the gross domestic product, social investment maintained the same levels as in 2012.

16. Energy and mining projects, especially those in indigenous territories, were one of the main sources of unrest. The conflicts related to these projects occasionally led to episodes of violence, such as in El Escobal and Santa Cruz Barillas (see para. 63 below). In May, a state of emergency (*estado de sitio*) was declared in some municipalities in the departments of Jalapa and Santa Rosa. A common denominator in these social conflicts was the failure to inform and to consult with indigenous and other local communities potentially affected by these projects.

17. In line with the recommendations of the High Commissioner and the Special Rapporteur on the rights of indigenous peoples, the President presented a bill that, if approved, would require a two-year moratorium on licences for the exploitation of metallic minerals. This could be a window of opportunity for a comprehensive process that should include not only a reform of the Mining Law, but also the strengthening of the environmental instruments and regulation of prior consultation, with the participation of indigenous peoples.

IV. Justice

A. Fight against impunity

18. There was significant progress in the fight against impunity. Court decisions were issued in high-impact cases related to organized crime, including cases of corruption, kidnapping, extortion, rape and murder. The role of the high-risk courts was crucial in these decisions. Coordination among State institutions in criminal investigation and prosecution led to the dismantlement of several corruption networks, including one involving the mayor of La Antigua and members of the municipal council; the arrest of the alleged perpetrators of the above-mentioned massacres of Nacahuil and Salcajá (para. 13); and the arrest of alleged drug traffickers, among others.

19. However, there was little progress in the implementation of the Law of the General Directorate of Criminal Investigation, which would contribute to ensuring a sustained coordination among institutions.

20. In comparison to 2010, there was a 15 per cent increase in scientific evidence requests from the Attorney General's Office to INACIF in the investigative phase, resulting in accusations that were no longer based primarily on witness testimony. This contributed to a 6.47 per cent increase in the number of accusations as compared to 2012, as well as to an increase of 9.4 per cent in the number of convictions.[9] A positive development was the establishment, in January, of the Criminal Analysis Unit in the Attorney General's Office, with the mandate to advise prosecutors on strategic decisions related to criminal proceedings.

21. The purge within the Attorney General's Office did not advance in the same way. Congress failed to appoint the members of the Council of the Attorney General's Office —

[9] *Source*: Attorney General's Office.

the body responsible for hearing appeals in disciplinary proceedings. As a result, it was not possible to execute sanctions in 87 per cent of the cases because they were under appeal.[10]

22. The new management model of the Judiciary (Organismo Judicial) helped reduce the judicial backlog. In Guatemala City, the percentage of cases solved (ending with a verdict or other forms of termination) between 2010 and 2013 increased by 48 per cent in first instance criminal courts and by 62 per cent in criminal sentencing tribunals.[11] The Judiciary took important steps in the area of infrastructure and formulated proposals for legal and regulatory reforms, such as the Code of Civil and Commercial Procedure, aimed at reducing the backlog in non-criminal jurisdictions (civil, family, labour, children and adolescents).

Human rights cases

23. OHCHR-Guatemala registered progress in the prosecution of human rights violations. In August, High-Risk Tribunal "B" convicted three police officers, including the former chief of criminal investigation, for the extrajudicial execution of 10 inmates in 2005 and 2006, related to a breakout from the "El Infiernito" Detention Centre and the "Pavo Real" plan in the Pavón Detention Centre, respectively.[12] Two people face prosecution in Spain and Switzerland for the same events, and one person was acquitted in Austria in October.

24. In January, an appeals judge issued a verdict, substantiated by international standards, which repealed a circular of the Penitentiary System Directorate preventing transsexual persons deprived of liberty from wearing female clothing or having long hair.

25. Regarding the justiciability of economic, social and cultural rights, a judge for children and adolescents issued four verdicts recognizing the State's responsibility for the violation of the right to food of two boys and three girls in Camotán, Chiquimula. The judge ordered the State to provide comprehensive measures of reparation, which were partially implemented.

B. Transitional justice

1. The genocide trial

26. In May, High-Risk Tribunal "A" sentenced Efraín Ríos Montt to 80 years' imprisonment and acquitted former intelligence chief José Mauricio Rodríguez Sánchez, demonstrating that it is possible to prosecute former high-level State officials for genocide in their own country. During the trial, the testimonies of nearly 100 indigenous victims were heard, in their own languages, and, for the first time, in an oral and public debate indigenous women spoke about the sexual violence they had suffered during the internal armed conflict.

27. However, the use of over 70 different delay tactics by defence lawyers, especially injunctions (*amparos*) in various instances, was aimed at obstructing justice. Only 10 days after the judgement was issued, the Constitutional Court nullified the sentence and reverted the process to an earlier stage. The resumption of proceedings has been tentatively scheduled for 5 January 2015. This situation has affected the victims' right to justice, after

[10] Ibid.

[11] *Source*: Judiciary (Organismo Judicial).

[12] See E/CN.4/2006/10/Add.1 and Corr.2, para. 13.

they waited for over 30 years. The plaintiffs then filed a case before the Inter-American Commission on Human Rights.

28. The debate outside the courts was marked by media campaigns to discredit judges, prosecutors, human rights defenders and members of the international community. There were also instances of racial hatred against indigenous peoples. Public statements by the private and other sectors tested the independence of the judiciary. However, the events described in detail by the witnesses during the proceedings, and confirmed by scientific evidence, were never refuted.

2. Other developments

29. In March, former military commissioner Isidro Cardona Osorio was convicted for the 1982 enforced disappearance of Edgar Leonel Paredes Chegüén. Two former directors of the now defunct National Police were convicted for the enforced disappearance, in 1984, of the student Edgar Fernando García. In September, a commander of a non-State armed group was charged with murder and crimes against humanity in relation to acts committed in 1988 against civilians in the village of El Aguacate, Chimaltenango.

30. In an unequivocal statement, in August, the Constitutional Court affirmed the inadmissibility of amnesties and statutes of limitations in cases of serious human rights violations, in conformity with the State's international obligations. The High Commissioner hopes that this line of jurisprudence will be maintained. In the Ríos Montt case, there is a pending judicial decision on whether to apply the Law on National Reconciliation, which rules out amnesty in relation to genocide, crimes against humanity and other international crimes, or an older law (Decree 8-86), which granted broad amnesty for political crimes.

31. Progress was made in the mapping of institutional archives, which is crucial both in terms of ensuring access to information and documenting paradigmatic cases from the past. However, there is still no legal framework to safeguard these archives, as mentioned in previous reports.[13]

C. Independence of the judiciary

32. The Supreme Court of Justice, with OHCHR-Guatemala's support, presented to Congress a bill to reform the Law on the Judicial Career. Congress should give priority to the adoption of this bill, further incorporating OHCHR-Guatemala's recommendations to ensure the separation of the administrative and jurisdictional functions, in accordance with the principle of judicial independence. The approval by the Supreme Court of internal mechanisms to strengthen due process guarantees in disciplinary proceedings, including regulations on ethical standards, is another positive step.

33. While threats against judicial personnel continued, there was little progress in investigating and prosecuting these cases, confirming the need to strengthen the Judicial Operators Unit of the Attorney General's Office. Judges, prosecutors, victims and witnesses were subject to threats, particularly in the context of the genocide trial. The Attorney General also suffered constant attacks and media campaigns that sought to discredit her work. Three magistrates suffered public attacks as a result of decisions based on international standards on indigenous peoples (see para. 62 below). In February, attorney Lea de León, who had litigated high-impact cases, was murdered.

[13] A/HRC/22/17/Add.1, para. 41; A/HRC/19/21/Add.1, para. 38.

D. Justice and indigenous peoples

34. Indigenous authorities and organizations continued to turn to the judicial system to defend their rights. Most of the cases questioned the granting of licences for mining or energy projects without prior consultation. In three cases related to the granting of hydroelectric licences in the Ixil region, the Human Rights Ombudsman (Procurador de los Derechos Humanos) filed amicus curiae briefs in the Constitutional Court in support of the plaintiffs' claims.[14]

35. The Constitutional Court handed down five sentences on the collective rights of indigenous peoples, in response to constitutional injunctions or *amparos* related to consultation (see para. 57 below), collective property (see para. 59 below), and the use of indigenous names (two cases against the National Registry Office[15]). Although in some cases the Court did not rule in favour of the plaintiffs, the progressive incorporation of international standards in the Court's jurisprudence established important precedents for future litigation.

36. Given the lack of a specific legal framework, the coordination between the indigenous and the ordinary jurisdictions continued to face challenges. Despite this, two decisions by the Supreme Court's Criminal Chamber acquitted K'iche' authorities of Totonicapán who had been detained after administering justice in their respective communities.[16] These decisions followed "a process of development of jurisprudential doctrine that defines indigenous law as a set of principles and norms … coexisting with State law under a paradigm of legal pluralism".[17]

37. In spite of these incipient advances in jurisprudence, indigenous peoples continue to face serious obstacles to access to the ordinary justice system. The establishment of the Judiciary's Centre for Indigenous Legal Translation and Interpretation, in August, and the creation of the Department on Indigenous Peoples in the Attorney General's Office, in July, could help overcome these obstacles.

E. Deprivation of liberty

38. The penitentiary system registered an increase in the number of persons deprived of liberty, further exacerbating the overcrowding in jails (153 per cent above capacity). More than 50 per cent of detainees are in pretrial custody (7,445 men and 894 women). In the past five years, the number of women in detention doubled (from 650 in 2008 to 1,452 by 31 August 2013).[18]

39. Despite the measures taken by the State to control detention centres and fight corruption within them, criminal networks continued to operate within and outside these centres. The case of a military officer convicted of murdering Bishop Juan Gerardi in 1998, who was found by authorities outside the penitentiary where he was serving his sentence; as well as the Nacahuil massacre (see para. 13 above), allegedly ordered from within a detention centre, were among the most notorious cases.

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[14] Case file 1149-2012, consolidated case files 4957-2012 and 4958-2012, and consolidated case files 5237-2012 and 5238-2012.

[15] Case files 4656-2012 and 4877-2011.

[16] Case files 01004-2012-01848 and 01004-2012-01524.

[17] Case file 01004-2012-01848, p. 6.

[18] Colectivo Artesana, *Situación del sistema penitenciario y el análisis del presupuesto como herramienta de auditoria social* (2013). See www.reglasdebangkokguatemala.org/?mo=_5&uni=40.

40. Despite the creation, in 2012, of the inter-institutional working group to implement precautionary measures granted by the Inter-American Commission on Human Rights on behalf of people with mental disabilities confined in the Federico Mora National Mental Health Hospital, and the efforts of the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH), the infrastructure for and nutritional and health conditions of the inmates continue to be of concern.

V. Security

41. Important initiatives were introduced in the context of the Security, Justice and Peace Covenant,[19] such as the creation in March of the Third Vice Ministry within the Ministry of the Interior, on the prevention of violence and crime. In addition, in accordance with proposals by the National Commission for Police Reform, two regional offices of the Police Academy and one school for PNC officers were established, incorporating about 3,000 new police members.[20] Due to its broad scope of application, some aspects of the Covenant are still in an incipient stage, in areas such as deprivation of liberty, local security committees, and prevention of armed violence. It is thus not possible to adequately assess its impact.

42. In response to the events in Totonicapán in October 2012,[21] the High Commissioner recommended that the involvement of the military in internal security should be exceptional and temporary, and subject to civilian control.[22] However, the use of joint military and police task forces increased, with limited effect on the improvement of security. Approximately 1,500 military were deployed in Escuintla, Huehuetenango and Zacapa.[23] The Maya Task Force, deployed in zone 18 of the capital, with more than 1,100 army and 124 police officers,[24] was able to reduce violent deaths locally by 32 per cent; however, property and sex-related offences increased.[25] At the national level, the downward trend in violent deaths since 2010 was reversed in 2013. According to diverging statistics from INACIF and the PNC, the homicide rate in 2013 increased by between 4.3 and 6.5 per cent in comparison to 2012; the rate for women increased by between 17 and 26 per cent.[26]

43. Some progress was observed in compliance with the law on regulating private security companies (Decree 52-2010), including the adoption, in October, of a regulation to implement the law,[27] and the granting of the first operating licences, in November. However, significant challenges persist in guaranteeing greater control of these companies, since the majority continue to operate without a licence and many individual security providers do not comply with the law.

44. Additionally, OHCHR-Guatemala registered new complaints of abuse by security company personnel during protests against mining projects. In May, a security official from

[19] See A/HRC/22/17/Add.1, para. 18.

[20] *Source*: PNC, data for January–October 2013.

[21] A/HRC/22/17/Add.1, para. 11.

[22] Press statement of 15 March 2012, p. 3. See www.ohchr.org.gt/documentos/comunicados/PRESS%20CONFERENCE%202%20rev%20CLEAN%20%20espanol.pdf.

[23] "Escuadrones de seguridad vigilan Escuintla, Zacapa y Huehuetenango", *Diario de Centro América*, 19 June 2013. See www.dca.gob.gt/index.php/template-features/item/20640-fortalecerán-la-seguridad.html. See also www.guatemala.gob.gt/index.php/2011-08-04-18-06-26/item/4171-gobierno-presenta-tres-escuadrones-de-seguridad-ciudadana.

[24] *Source*: Ministry of the Interior.

[25] *Source*: PNC, data for January–October 2012, January–October 2013.

[26] *Source*: INACIF and PNC, data for January–October 2012, January–October 2013.

[27] Government Order 417-2013.

the San Rafael mine was charged with bodily injury and obstruction of justice during an attack by the company's private security guards against a group of demonstrators (see para. 63 below). In July, the Superior Court of Ontario, Canada agreed to hear three cases against HudBay Minerals for homicide, bodily injury and sexual violence allegedly committed by security personnel in El Estor, Izabal. The absence of mechanisms within the business sector, particularly among extractive companies, to guarantee that company security practices are in compliance with international standards, is of concern.

VI. Human rights defenders

45. According to the Unit for the Protection of Human Rights Defenders of Guatemala (UDEFEGUA), attacks and threats against human rights defenders increased in the past five years. By September, 18 murders had been reported. These included the killings of Carlos Hernández Mendoza, a member of the Camoteca Peasants' Association, in Chiquimula, in March; Excaltación Marcos Ucelo, a member of the Council of Santa María Xalapán; and Daniel Pedro Mateo, leader of the Social Movement of Santa Eulalia in Santa Cruz Barillas, in April. These three cases took place in the context of conflicts related to the exploitation of natural resources.

46. During the year, the offices of the Association for the Advancement of the Social Sciences (AVANCSO) and the Central American Institute for Social Democracy Studies (DEMOS), the organization of the current Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, were broken into, and computers and documents stolen. According to preliminary investigations, these cases were common crimes, and the alleged perpetrators were detained. A break-in at the home of an attorney of the Centre for Legal Action in Environment and Social Issues (CALAS) was also reported; to date there has been no progress in the investigation.

47. OHCHR-Guatemala observed that protests by communities and social organizations against projects for the exploitation of natural resources frequently triggered criminal proceedings against protestors with charges such as terrorism and criminal conspiracy, which appear disproportionate to the gravity of the alleged offences.[28] Several cases were dismissed by the judiciary due to the lack of evidence and the inability to prove individual responsibility. Examples include the case of Rubén Herrera, a member of the Assembly of Peoples of Huehuetenango for the Defence of Territory, charged on 12 counts (including terrorism), who was released in May, and the cases of 26 people detained in San Rafael las Flores, in April, on charges of "unlawful assembly" and attacks on public authorities, who were subsequently released due to lack of evidence.

48. In August, the Human Rights Ombudsman issued a resolution, based on human rights standards, in which he declared that all publications and speeches that stigmatize and discredit human rights defenders are an attack against their dignity, incite hatred and delegitimize their work.[29]

49. The Unit for the Analysis of Attacks against Human Rights Defenders lost relevance, despite efforts by several institutions to reclaim its role. The representatives of the institutions participating in the Unit were replaced by technical officers, which contributed to the decision by some civil society organizations to no longer participate in

[28] A/HRC/22/17/Add.1, para. 49.

[29] See www.pdh.org.gt/archivos/descargas/Documentos/Resoluciones/resolucin_por_denuncia_de_amenazas_a_defensores_de_derechos_humanos.pdf.

the Unit. After the murders of four journalists, the Government launched a protection mechanism for media workers with the support of UNESCO and OHCHR-Guatemala.

VII. Women's rights

A. Violence against women

50. The establishment of the Special Cabinet for Women under the Vice-President's Office triggered a process of inter-institutional coordination in favour of women's rights. Gender units, which are to provide advice to the President regarding the formulation of gender policies, were activated within ministries and secretariats.[30] However, there were delays in the allocation of funds for the Comprehensive Support Centres for Women Survivors of Violence (CAIMUs).

51. In 2013, 198 reports of femicide and 31,836 reports of other forms of violence against women were filed.[31] There is no disaggregated data for indigenous and Afro-descendant women. Given the dimensions of the problem, the strengthening of the model for comprehensive assistance to victims in five units of the Attorney General's Office throughout the country was an important step.

52. Specialized courts established to handle cases of femicide and other forms of violence against women proved effective in issuing verdicts. Of the 556 judgements in this area, 427 were delivered under this specialized jurisdiction.[32] Despite the opening of new courts and tribunals in Escuintla and Izabal, the specialized tribunals face challenges regarding the expansion of their coverage, and regarding the standardization of policies with those of ordinary tribunals.

53. The Secretariat against Sexual Violence, Exploitation and Human Trafficking (SVET) strengthened inter-institutional coordination for the implementation of the Law against Sexual Violence, Exploitation and Human Trafficking. However, the lack of statistical information and the high degree of impunity in these crimes (93 per cent) is of concern.[33]

B. Sexual and reproductive rights

54. Despite recent legislative progress,[34] data continue to reveal a disturbing reality. A total of 373 women died of pregnancy-related causes. Abortions performed under dangerous conditions continued to be the fourth leading cause of maternal death.[35] OHCHR-Guatemala is concerned about the State's position regarding its "unqualified respect for the right to life from the moment of conception",[36] presented in response to the

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[30] Government Order 260-2013.

[31] *Source*: Attorney General's Office.

[32] *Source*: Judiciary.

[33] Human Rights Ombudsman, "Informe de situación sobre trata de personas en Guatemala 2012", p. 16.

[34] Law on Universal and Equal Access to Family Planning Services (Decree 87-2005) and the Law on Healthy Maternity (Decree 32-2010).

[35] *Source*: Observatory on Reproductive Health (OSAR) (September 2013).

[36] Montevideo Consensus on Population and Development, outcome document of the first session of the Regional Conference on Population and Development in Latin America and the Caribbean, Montevideo, 12–15 August 2013, p. 38. See www.eclac.cl/publicaciones/xml/2/51922/MontevideoConsensus.pdf.

Montevideo Consensus on Population and Development, which calls for the availability of safe abortion services in those cases where abortion is legal under relevant national legislation.

55. The Health Information Management System recorded 2,906 pregnancies among girls between 10 and 14 years old (January–June 2013), despite State efforts in that area. In this context, SVET reported 457 cases of rape to the Attorney General's Office.[37]

VIII. Rights of indigenous peoples

56. The protection of the rights of indigenous peoples continued to be limited by inadequate legislation and the weakness of the institutions with mandates on indigenous issues. Funding for the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA), the Office for the Defence of Indigenous Women (DEMI) and the Guatemalan Fund for Indigenous Development (FODIGUA) represented only 0.009 per cent of the national budget. In August, the President announced the creation of a Cabinet for Indigenous Peoples and Intercultural Affairs. This initiative, in addition to other commitments made by the Government in 2012,[38] reflects the increasingly widespread perception of the need for a debate on the design and mandate of these agencies.

A. Participation and consultation

57. The obligation of the State to consult with indigenous peoples was reiterated, as a matter of principle, in two Constitutional Court judgements; however, the Court failed to overrule administrative and legislative measures that were adopted without prior consultation with indigenous peoples. In February, the Court dismissed an action challenging the constitutionality of the Mining Law, which alleged lack of consultation with indigenous peoples in the adoption of the Law. In its judgement, the Court confirmed its jurisprudence on the State's duty to consult with indigenous peoples under International Labour Organization (ILO) Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries, but concluded that it was not applicable in relation to the Mining Law because its "scope is broad and not restricted to any particular territorial region or specific cultural or ethnic group".[39] Also in February, the Court granted an injunction (*amparo*) filed by Q'eqchi' communities that had not been consulted on the Entre Ríos hydroelectric project in Lanquín, Alta Verapaz.[40] However, the Court decided not to cancel the project, so as not to affect the country's development policies.

58. The Ministry of Labour and Social Welfare continued to coordinate an ad hoc inter-ministerial committee established to draft a protocol for consultations with indigenous peoples. Without waiting for the results of this process, the Ministry of Energy and Mines simultaneously granted three new mining licences and four licences for hydroelectric projects[41] without prior consultation. In response, indigenous peoples held eight new "good-

[37] Human Rights Ombudsman, *Análisis de la situación de embarazos en niñas y adolescentes en Guatemala 2011-2013*, twenty-fifth page and thirty-fourth page. See http://osarguatemala.org/userfiles/INFORME%20DE%20EMBARAZOS%20EN%20NINAS%20Y%20ADOLESCENTES.pdf.

[38] A/HRC/22/17/Add.1, para. 61.

[39] Case file 1008-2012, p. 38.

[40] Case file 4419-2011.

[41] *Source:* Ministry of Energy and Mines.

faith community consultations", which were not taken into account as starting points for broader consultation processes involving the State.

B. Lands, territories and natural resources

59. The land rights of indigenous peoples continued to be circumscribed by legislation that fails to meet international standards. In February, the Constitutional Court resolved a claim that challenged the constitutionality of part of the Civil Code because it did not regulate indigenous communal property.[42] The Court recognized that this was an "issue that was pending in the legislative history of the country".[43]

60. The reform of the administrative procedures of the Land Fund (FONTIERRAS) paved the way for the recognition of indigenous communities as direct collective rights holders, without resorting to formulas that are foreign to indigenous forms of organization, such as peasant associations.

61. The Secretariat for Agrarian Affairs continued to hold round-table discussions on ancestral land claims in the Xinka communities of Santa María Xalapán, citing a Royal Decree from 1717. This unprecedented process highlights the importance of taking a historical approach to the resolution of indigenous land conflicts.

62. A number of development projects increased tensions between municipal authorities and communities over the ownership of and access to collective lands. Examples include the legal disputes between the Cofradía de San José and the municipality of San José Poaquil, Chimaltenango, over the administration of a communal forest, and that of the Kaqchikel authorities in the municipality of Chuarrancho, Guatemala, in relation to the lands that were titled to the community in the nineteenth century. The decision by the Third Appeals Court of Civil and Commerce Law in the Chuarrancho case[44] further establishes an important legal precedent in the recognition of collective lands and traditional authorities, demonstrating that justice for indigenous peoples can be achieved through the national justice system. These cases were supported by the strategic litigation component of the Norwegian-funded Maya Programme.

63. Approval of licenses for mining and energy projects continued to generate conflict. In the mining site of El Escobal (San Rafael las Flores, Santa Rosa), peaceful anti-mining protests involving neighbouring communities were held, but there were also recurring outbreaks of violence. In January, two private security guards were killed by armed persons. In April, six villagers were injured by security guards, one policeman was killed in San Rafael and 25 police officers were detained by the communities for 14 hours in Xalapán. These incidents led to the declaration of a state of emergency in May. In July, four cement-plant workers in San Juan Sacatepéquez were attacked with machetes in Santa Fe Ocaña. In August, during the visit of the Rapporteur on the Rights of Indigenous Peoples of the Inter-American Commission on Human Rights, two children were shot dead by an unknown gunman in the Q'eqchi' community of Monte Olivo, Cobán, which opposes the Santa Rita hydroelectric project. In Santa Cruz Barillas, Huehuetenango, the detention in September of a leader opposed to a hydroelectric project led to renewed protests and roadblocks in the region — one soldier was killed and a community member injured.

64. Several initiatives were undertaken by the Government to solve conflicts, such as round-table discussions or the provision of voluntary royalties. Some of these initiatives

[42] A/HRC/22/17/Add.1, para. 66.
[43] Case file 266-2012, p. 18.
[44] Case file 01044-2013-363.

succeeded, at least temporarily, in reducing tensions. In June, the President inaugurated a round-table discussion concerning the El Tambor mining project, in San José del Golfo and San Pedro Ayampuc, with the participation of the Human Rights Ombudsman and the Representative of the United Nations High Commissioner for Human Rights in Guatemala. In October, a round-table discussion continued in Barillas. The Government took steps to strengthen the Presidential Commission for the National System of Dialogue, particularly through the adoption of Government Order 166-2013, which builds on a preventive approach and is aimed at strengthening the conflict-management capacities of authorities at local and departmental levels.

IX. Economic and social rights

65. In view of the concentration of poverty and extreme poverty in rural areas (71 per cent of the rural population is poor compared to 35 per cent of the urban population), and despite opposition by powerful sectors, the Government took decisive steps towards the implementation of the National Policy for Comprehensive Rural Development with the creation of the Rural Development Cabinet and the adoption of a plan of action targeted at rural populations living in poverty. This policy is recognition that private investment alone, in rural areas, is not sufficient to promote inclusive human development, and that comprehensive measures are needed to support family agriculture.

66. In compliance with the agreements reached as a consequence of the 2012 Indigenous, Peasant and Popular March, monitored by OHCHR-Guatemala as honorary witness,[45] the Government granted land for the relocation of 140 families that had been evicted from the Polochic Valley in 2011[46] and reiterated its commitment to relocate the remaining 628 families.

67. Regarding access to land, FONTIERRAS resolved 47 of the 123 cases of agrarian debt by granting subsidies that covered, on average, 77 per cent of individual debt. However, due to the low budget allocated to the fund, the land purchase programme has been discontinued. Such issues indicate the need to reformulate agrarian policies in accordance with the voluntary guidelines on land tenure prepared by the Food and Agriculture Organization of the United Nations.[47]

A. Right to food

68. Malnutrition rates continue to be of grave concern. The 13,193 cases of acute malnutrition in children under five reflect a 15 per cent increase in comparison with 2012.[48] The coverage of the Zero Hunger Plan reached 166 priority municipalities and engaged local authorities in the implementation of the plan. The information and monitoring system on food security improved. The budget of the "1,000 Day Window" programme, the main component of the Plan, was doubled and implementation rates improved.[49]

69. Despite progress, the Human Rights Ombudsman confirmed the persistence of serious obstacles to the implementation of the Zero Hunger Plan in some of the poorest and

[45] A/HRC/22/17/Add.1, para. 49.
[46] See www.oacnudh.org.gt/documentos/informes/Estudio_desalojos_Polochic_2013.pdf.
[47] See www.fao.org/docrep/016/i2801e/i2801e.pdf.
[48] SESAN, *Pronóstico de Seguridad Alimentaria y Nutricional* (September 2013–November 2013), p. 3.
[49] According to the General Revenues and Expenditures Budget for Fiscal Year 2013, Q633 million were allocated to the programme. At 31 August, 65 per cent of the resources had been disbursed.

most remote municipalities. Issues identified include a lack of medicine and micronutrients and insufficient numbers of health care workers.[50] The "Mi bono seguro" programme, launched by the Ministry of Social Development, reported low budgetary execution (52 per cent as at November), as well as delays in the delivery of conditional cash transfers. In order to meet its goals, the programme must focus on the structural issues that contribute to malnutrition rates, such as impediments to food production, to income-generation, to the payment of minimum wages and to the improvement of rural infrastructure.[51] The impact of the rust plague on coffee crops during 2013 has compounded the situation – an estimated 75 per cent of temporary workers and 77 per cent of small coffee growers now face food insecurity.[52]

B. Labour rights

70. In the context of an ILO mission and the Dominican Republic – Central America – United States Free Trade Agreement, measures were taken to improve compliance with labour standards.[53] The Ministry of Labour adopted regulations to improve monitoring practices in critical areas.[54] However, if more resources are not allocated to the Labour Inspectorate, the implementation of the regulations will be limited.

71. The Ministry of Labour inspected agricultural, textile and security companies, as well as sectors with high levels of child labour. A total of 640 agricultural companies were inspected, of which 26 per cent did not pay the minimum wage, and 20 per cent did not enrol their workers in the Guatemalan Social Security Institute (IGSS).[55] Out of the 1,386 security companies inspected in 2013, 1,042 failed to pay the minimum wage and 843 companies did not enrol their workers in the IGSS.

72. The situation of domestic workers did not improve during the year. It is estimated that 60 per cent of such workers earn salaries under the minimum wage, 98 per cent have no employment contract, and only 1 per cent were enrolled in the IGSS.[56] The ratification of ILO Convention No. 189 (2011) concerning Decent Work for Domestic Workers would contribute to eliminating discriminatory treatment.

73. In September, an ILO high-level tripartite mission visited the country to assess the need for a commission of inquiry on freedom of association.[57] The mission noted the involvement of CICIG in the investigation of 20 of the 58 cases of killings of trade unionists previously brought before the ILO. The mission also noted the signing of an agreement between the Attorney General's Office and trade unions to investigate the cases. However, the mission reported that no investigations had led to sentencing. Trade unions submitted eight additional cases of killings in 2013.

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[50] Report of the Human Rights Ombudsman on the mission to monitor the implementation of the Zero Hunger Plan of the municipalities of San Mateo Ixtatán and San Miguel Alcatán (Huehuetenango), Olopa (Chiquimula) and Purulhá (Baja Verapaz), 2013.

[51] World Food Programme et al., *Evaluación de Seguridad Alimentaria en Emergencias* (2013).

[52] Ibid., p. 29.

[53] Implementation Plan agreed between the Government of the United States of America and the Government of Guatemala, April 2013.

[54] See www.mintrabajo.gob.gt/index.php/leyes-conveniosyacuerdos/documentos-dr-cafta.

[55] See www.mintrabajo.gob.gt/images/organizacion/DR-CAFTA/Estadisticas2013/PLAN_OPERATIVO_MAYO_2013_AGRO-EXPORTADOR-MAQUILA.pdf.

[56] Asociación de Trabajadoras del Hogar a Domicilio y de Maquila (ATRAHDOM) and Solidarity Center-American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), Domestic work in Central America (2013).

[57] Conclusions of the high-level tripartite mission to Guatemala, September 2013.

74. The President sent a bill to Congress proposing reforms to the Labour Code to establish a procedure by which only labour courts could sanction employers for breaches of labour standards.[58] However, the ILO mission recommended that Congress adopt legislation enabling the Labour Inspectorate to directly impose administrative sanctions.

C. Right to housing

75. Shortcomings in the enjoyment of the right to adequate housing were evidenced by a substantial housing deficit (1,501,166 homes),[59] as well as in the number of irregular urban settlements (over 400). The budget allocation for the Housing Fund (FOPAVI) proved insufficient to address the situation.[60]

76. The case of La Palangana, involving the relocation of 470 families that were occupying a plot of land in the capital, illustrates the existing challenges in the implementation of the Housing Law.[61] Only 254 of those families received subsidies through the Fund's housing subsidy programme. Due to administrative problems the families were relocated to a plot of land with inadequate living conditions, as the planned construction work had not been undertaken.

X. Business and human rights

77. In 2013, the organized business sector supported policies on education and the fight against malnutrition. In October, at the National Meeting of Business Leaders, the "Mejoremos Guate" initiative led to the signing of a human development pact involving the political parties represented in Congress. The High Commissioner hopes that this trend towards implementing corporate social responsibility will gradually incorporate the responsibility to respect human rights. This entails identifying, preventing, mitigating and accounting for the negative impacts of business activities on human rights, especially indigenous peoples' rights.

78. The process towards the establishment of a Global Compact Local Network continued. The High Commissioner welcomes this development and encourages business companies as well as civil society stakeholders to adhere to the principles of the Global Compact, particularly those related to the respect for universally recognized human rights.

XI. Activities of the Office of the United Nations High Commissioner for Human Rights in Guatemala

79. OHCHR-Guatemala conducted 46 missions throughout the country to monitor the human rights situation, and held meetings with authorities, social organizations, victims and their families, and witnesses to follow up on alleged or confirmed human rights violations. It also monitored judicial proceedings in paradigmatic cases.

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[58] Initiative No. 4703, which would amend the Labour Code (Congressional Decree 1441).

[59] *Actualización del Déficit Habitacional en Guatemala*, prepared by the Fund for Local Development in Guatemala (FDLG), 2012.

[60] The FOPAVI budget was only 7.78 per cent of the budget of the Ministry of Communications, Infrastructure and Housing.

[61] Decree 9-2012.

80. OHCHR-Guatemala provided technical assistance to Congress on reforms to the Law on Nominating Commissions; the creation of the Commission on the Search for Disappeared Persons; implementation of the Rome Statute of the International Criminal Court; ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and of the International Convention for the Protection of All Persons from Enforced Disappearance; and a bill on community media.

81. OHCHR-Guatemala provided training to criminal judges from around the country, judicial officers of tribunals for children and adolescents, judges focused on high-risk cases, and Supreme Court and Constitutional Court legal clerks. The Office continued to support the thematic compilation of international standards for the Constitutional Court's website and organized seminars with magistrates of the Constitutional Court and of the Supreme Court's Criminal Chamber.

82. OHCHR-Guatemala provided assistance to the Ministry of Labour in drafting an inspection protocol for agricultural workers and to the National Council for Persons with Disabilities (CONADI) in creating a legislative commission on persons with disabilities. The Office provided training on indigenous peoples' rights to the Ministry of the Environment and Natural Resources and to the Ministry of Energy and Mining.

83. Technical assistance was provided to the Human Rights Ombudsman in order to strengthen the institution's regional offices, improve methodologies and procedures for the investigation of human rights abuses, and foster the implementation of a human rights-based approach in the analysis of social conflicts. Technical assistance was provided to the Amparos and Appeals Unit of the Attorney General's Office in the areas of transitional justice, children's rights, and rights of lesbian, gay, bisexual, transsexual and intersex (LGBTI) persons, and to the Department for Indigenous Peoples.

84. Technical assistance was also provided to civil society organizations working in various areas, such as economic, social and cultural rights, transitional justice, the prevention of torture, the rights of persons with disabilities, LGBTI persons, migrants and indigenous peoples.

85. OHCHR-Guatemala facilitated dialogue between indigenous leaders and authorities, and provided technical assistance to the Council of Peoples of the West, to the 48 Cantones of Totonicapán, to the Coordinadora Nacional de Viudas de Guatemala, and to the Ixil indigenous authorities.

86. OHCHR-Guatemala concluded the first phase of the Maya Programme (funded by Norway), which included training on strategic litigation in indigenous rights cases. Partner organizations filed 18 cases before Guatemalan courts.

87. OHCHR-Guatemala convened a discussion group on transitional justice and provided advice to the UNDP Transitional Justice Programme in Guatemala; participated in working groups with United Nations agencies and donor countries, and provided technical assistance to the Peacebuilding Fund. Together with UNESCO, OHCHR-Guatemala organized a national consultation with indigenous peoples concerning the United Nations development agenda beyond 2015 and participated in the preparation of the United Nations Development Assistance Framework for 2015–2019.

88. OHCHR-Guatemala organized public forums on weapons control, implementation of international standards, nominating commissions, LGBTI rights, and an inter-agency presentation of a report on evictions in the Polochic Valley.

89. In general, OHCHR-Guatemala promoted public debates on human rights-related issues through statements by the High Commissioner, press releases and public statements or interviews, messages from special procedures of the Human Rights Council, and the use of social networks. It presented and distributed the report of the High Commissioner on the

situation of human rights in Guatemala (A/HRC/22/17/Add.1) at the twenty-second session of the Human Rights Council, and disseminated publications and educational material through its Documentation Centre. It continued to promote respect for diversity with the photo exhibit "Guatemala Diversa" nationwide, and in various forums and conferences. It collaborated with the Theatre Festival on Human Rights and the International Film Festival on Memory, Truth and Justice.

XII. Cooperation with human rights protection mechanisms

90. In March, the Human Rights Council adopted the outcome of the second universal periodic review of Guatemala (A/HRC/22/8). Guatemala received 138 recommendations, accepting 111 and taking note of 27 (A/HRC/22/8/Add.1). In particular, the State pledged to redesign the human rights institutional system and strengthen the specialized jurisdiction to protect women, to develop policies for the prevention of violence, and to develop a protection programme for journalists. It also committed to maintaining its permanent system for follow-up to recommendations, in cooperation with civil society, and to submit a mid-term implementation report. The High Commissioner reiterates her willingness to provide technical assistance to support the Government in implementing recommendations from all United Nations human rights mechanisms, including those of the universal period review.

91. The Committee against Torture adopted its concluding observations on Guatemala in May (CAT/C/GTM/CO/5-6), noting the lack of progress in the definition of the crime of torture, in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, despite its previous recommendations and Constitutional Court resolution 1822-2011. The Committee further stated the need to designate the members of the national preventive mechanism.

92. With the involvement of CONADI and technical assistance of OHCHR-Guatemala, the State submitted its first report to the Committee on the Rights of Persons with Disabilities (CRPD/C/GTM/1). The report signalled serious difficulties in the implementation of the relevant instruments, such as the Law for Persons with Disabilities and the National Policy for Persons with Disabilities, due to limited budget allocation, the lack of social awareness, and the absence of specific data, among other reasons.

93. The Government will be providing dates for the visits requested by several special procedures mandate holders.

XIII. Recommendations

94. **The United Nations High Commissioner for Human Rights urges the State to implement, in a coordinated manner and in consultation with civil society, the recommendations made in her previous reports, as well as the recommendations from United Nations human rights mechanisms, including the universal periodic review.**

95. **In the light of the situation, as observed by OHCHR-Guatemala, the High Commissioner would like to make the following recommendations.**

Justice and security

96. **The High Commissioner:**

(a) Calls on the nominating commissions to guarantee the honourableness and professional excellence of selected candidates, in compliance with the principles of

objectivity, transparency and accountability, and to ensure the representation of indigenous peoples and women;

(b) Recommends that the State fully implement the Law of the General Directorate for Criminal Investigation;

(c) Recommends that the State ensure that the National Institute of Forensic Science is allocated adequate resources to carry out its work;

(d) Taking into account the important role of high-risk courts in the fight against impunity, recommends that the Supreme Court of Justice continue to strengthen them;

(e) Encourages Congress to adopt the amendments to the Law on the Judicial Career and the Statutory Law of the Attorney General's Office, ensuring their consistency with international standards, as well as to appoint the members of the Council of the Attorney General's Office;

(f) Recommends that Congress ratify the International Convention for the Protection of All Persons from Enforced Disappearance as a guarantee of non-recurrence;

(g) Recommends that the Government support the proposals of the National Commission for Police Reform and gradually remove the army from citizen-security tasks. The High Commissioner further recommends that the State formulate and implement a disarmament policy.

Human rights defenders

97. The High Commissioner recommends that the State guarantee that human rights defenders can carry out their activities freely and safely; ensure a transparent, comprehensive and effective protection mechanism; and, in response to discrediting media campaigns, publicly recognize the importance of their role.

Indigenous peoples

98. The High Commissioner encourages the State, in the context of the debate on the Mining Law reform, to review, in consultation with indigenous peoples, the legislative and institutional framework related to resource development projects, in order to reinforce social and environmental safeguards.

Women and girls

99. The High Commissioner:

(a) Recommends that the State allocate sufficient resources to the specialized tribunals on femicide and other forms of violence against women and expand their coverage;

(b) Encourages the State to continue its efforts in the prosecution of cases of femicide and other forms of violence against women; to ensure that all women victims of violence, especially indigenous and rural women, have access to justice; and to ensure adequate resources for Comprehensive Support Centres for Women Survivors of Violence.

Persons with disabilities

100. **The High Commissioner calls on the State to urgently comply with the precautionary measures granted by the Inter-American Commission on Human Rights to 334 patients of the Federico Mora National Mental Health Hospital, as part of the measures required to improve their human rights situation.**

Economic and social rights

101. **The High Commissioner encourages the Government to guarantee the effectiveness of the plan for the implementation of the rural development policy by extending the coverage and allocation of the Family Agriculture Programme under the Ministry of Agriculture, Livestock and Food and aligning the Ministry of Economy's programmes with the plan's objectives. The High Commissioner also calls upon Congress to adopt the draft law on rural development, in order to ensure sustainability.**

Business and human rights

102. **The High Commissioner calls on companies, especially those whose activities may bear a greater risk of social conflict, to align their policies with the Guiding Principles on Business and Human Rights, in order to prevent, mitigate and remedy the potential negative impact of their operations.**